S.B. CRIMINAL MISC. BAIL APPLICATION NO.1321/2006
(Devi Lal & Ors. Vs. State)

Date of order : 5.5.2006

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. V.K. Mathur, for the applicants.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Mridul Jain, for complainant.

I have heard learned counsel for the applicants and learned Public Prosecutor for the State as well as learned counsel appearing on behalf of the complainant and carefully gone through the impugned order.

It is contended by the learned counsel for the applicants that all other co-accused have already been enlarged on bail and in this case cross FIR has also been filed by the accused-party. It is contended by the learned counsel for the applicants that applicant Jiya Lal received as many as five injuries including injury upon his head and another accused Tulsa Ram received three injuries but knowingly that there is injury upon the head of Jiya Lal, the Police has registered the case under Sections 323, 341 and 34 I.P.C. against the complainant party in which the investigation is going on. In the present case, injured Gopi Ram has received two injuries out of which one is upon head and injured Kanshi Ram also received one injury upon head. The injury received by injured Kanshiram was simple in nature but injury

received by Gopi Ram was grievous in nature. At present, injured Gopi Ram is physically fit though the case was registered against the applicants under Sections 341, 323 and 143 but after medical report, the police has added Section 307 I.P.C. and investigation is going on in both the cases. Further, it is contended by the learned counsel for the applicants that the complainant party has also received serious injury upon the head. It is also contended that there was no intention to inflict any injury upon the person of injured Gopi Ram but as per the allegation levelled in the FIR only one injury was caused by the applicant Devi Lal. Therefore, no intention can be gathered for committing any offence under Section 307 I.P.C. Likewise, other accused-applicant Jiyalal himself received injury upon head but prosecution is not considering that the case falls under Section 307 I.P.C.

Learned Public Prosecutor as well as learned counsel appearing on behalf of the complainant vehemently opposed the bail and contended that the injury was inflicted upon the head and in such type of cases, the consistent view of this Hon'ble Court is that when there is injury upon the head, the offence under Section 307 I.P.C. is made out, therefore, the bail application of the applicants may be rejected.

I have perused the case-diary of both the cases.

In my opinion, it is true that every case is having its own facts and at the time of deciding the bail application, the fact of the particular case is required to be seen and further, when injuries are upon the vital part of the body, then obviously, inference can be gathered that the offence falls under Section 307 I.P.C. but simultaneously, it is the duty of the Court to see the other facts of the case also to arrive at conclusion and taking decision for granting bail. In identical bail application being SB Criminal Misc. Bail Application No.1750/2006 (Chhagan Lal & Ors. Vs. State) decided by this Court on 3.5.2006, cross-cases were registered and allegations of inflicting head injuries were levelled against both the parties by way of filing cross-cases and while taking into account entirety of the facts, this Court has granted bail while considering the fact that in cross the trial court has granted bail. The facts of the present case clearly reveal that in the cross-case registered by the applicants though there is injuries upon the head of accused - Jiya Lal but Police has not found the case under Section 307 I.P.C. because the injuries are simple in nature. However, in the present case the injuries are upon the same part of the body and there is no repeated blows by the applicants and applicants are behind the bars from last near about two months. Therefore, looking to the totality of the case and the fact that in the cross-case, the police has found that all the offences are

bailable even there are head injuries upon the head of applicant – Jiya Lal. The injuries received by both the parties in both the cases are as follows :-

Injuries received by the persons of accused side (In FIR No.26/2006) :-

A. Jiya Lal :-

1. Incised wound with bleeding 2 cm x 1 cm and bone deep, occipital region scalp upper part left side.

2. Incised wound 3 cm x 1 cm and bone deep C bleeding right side, frontal region of scalp.

3. Swelling pain 4 cm x 3 cm right forearm upper part

4. Stab wound 0.5 cm x 0.5 cm and bone deep C bleeding just below left iliac crest.

5. Right clo pain, left hand, low bold. left thigh on examination tenderness is present.

B. Kriahan Lal :-

1. incised wound 10 cm x 0.5 cm bone deep with bleeding vertically placed over right ridgid occipital region and scalp behind right ear.

C. Tulsa Ram :-

1. Swelling C pain left forearm upper part.

2. Abrasion 0.5 cm x 0.3 cm lower lip inner aspect.

3. C/o low bode pain on examination tenderness is present.

Injuries received by the persons of complainant side (FIR No.27/2006) :-

A. Gopi Ram :-

1. Incised wound 10 cm x 10 cm bone deep zigzag shaped over vortex running from frontal region and scalp to occipital region with bleeding. (According to x-ray report linear fracture of frontal bone,

therefore, grievous in nature)

2. Swelling pain 6 cm x 4 cm, right forearm uppar part.

B. Kanshi Ram :-

1. Incised wound 3 cm x 0.5 cm bone deep vertically, frontal region and scalp left side C bleeding.

Thus, from above injury reports of both the sides, it is clear that three persons of the accused party received in all nine injuries including repeated incised wounds upon the head of applicant – Jiya Lal and injuries to other two persons whereas only two persons from the complainant party received in all three injuries. However, the Police has registered the case for offence under Section 307 I.P.C. against the present accused-applicants and against the complainant party for offence under Sections 323, 341 and 34 I.P.C. only.

Taking into consideration the peculiar facts and circumstances of the present case and without expressing any opinion, I think it just and proper to enlarge the accused-applicants on bail.

Accordingly, the application filed under Section 439 Cr.P.C. is allowed and it is directed that the applicants namely Devi Lal S/o Ganpat Ram and Jiya Lal S/o Krishan Lal shall be released on bail (in FIR No.27/2006 P.S. Raisingh Nagar, District Sri Ganganagar) provided each of them executes a personal bond in the sum of Rs.20,000/- and furnishes two sound

and solvent sureties in the sum of Rs.10,000/- each to the satisfaction of the learned trial court for their appearance before that Court on each and every date of hearing and whenever called upon to do so, till the completion of trial.

(GOPAL KRISHAN VYAS), J.

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